

United States
Circuit Court of Appeals

For the Ninth Circuit.

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs in Error,
vs.

VIRGINIA & GOLD HILL WATER COMPANY, a
Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Nevada.

Filed

APR 19 1915

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANERI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY
(a Corporation),
Defendants.

Third Amended Complaint.

Come now the plaintiffs, and by leave of Court first
had, file this their Third Amended Complaint, and
aver:

I.

That Rose Bright is a married woman, and the
lawful wife of Richard Bright, and that by reason
thereof said Richard Bright is impleaded herein as
plaintiff.

II.

That the Virginia & Gold Hill Water Company is a
corporation duly incorporated under and by virtue of
the laws of the State of California, and is now, and
at all the times herein mentioned, was and is, a cor-
poration, transacting business in the County of
Ormsby, State of Nevada, and the County of Storey,
in said State, as a water company, impounding,
ditching, fluming, storing and distributing water for
the purposes of irrigation and domestic uses for pay,
in said County of Ormsby and the County of
Storey, in the State of Nevada.

III.

That for more than thirty years last past, the plaintiffs Rose Bright and Michele Bucchianeri, and their predecessors in [1*] interest, have been the owners of and in the exclusive possession of, and entitled to the exclusive possession of the following described lands and water rights connected therewith, to wit:

All of that portion of the northeast quarter of the southeast quarter of Section 36, Township 16 North, Range 19 East, M. D. B. & M., embraced in the following described boundaries:

Beginning at a stone monument marked "A" near the western boundary of said northeast quarter of southeast quarter, running thence easterly in the direction of a large stone with a black spot on it to a point where said line crosses the eastern boundary line of said northeast quarter of southeast quarter, thence north to the northeast corner of said northeast quarter of southeast quarter, thence west along the northern boundary line of said northeast quarter of southeast quarter to a point due north of said monument marked "A," thence south to place of beginning, containing 25 acres more or less.

Also the south half of lot 2, in the southwest fractional quarter of Section 31, Township 16 North, Range 20 East, M. D. B. & M.

Also the southeast quarter of the southeast quarter of Section 36, Township 16, North of Range 19 East, M. D. M.

Also that portion of the northeast quarter of the southeast quarter of Section 36, Township 16 North,

*Page-number appearing at foot of page of original certified Record.

Range 19 East, M. D. M., lying south of the line drawn as follows:

Commencing at a point about ten feet north of a small group of springs near the west line of said last-named tract, and running southwesterly through a large granite rock lying just below the upper toll road, said rock being one-fourth of a mile more or less from said springs, said land being 4 chains in width on the eastern boundary line of said 40-acre tract and 6.3 chains on the western boundary line.

Also all water, water rights, ditches, flumes and springs, appertaining or belonging thereto or used in connection therewith. [2]

IV.

That for fully forty years last past and continuously, the defendant Virginia & Gold Hill Water Company, by means of dams, ditches, fluming, piping and impounding waters, and by the use of tanks, has diverted the waters of a certain lake in the County of Washoe, State of Nevada, called Marlette Lake, and carried and conducted said waters to Virginia City and Gold Hill, in the County of Storey, State of Nevada, for mining, agricultural and domestic uses; that on or about the time of the building and construction of its said dams, pipes, flumes, tanks and impoundment of waters, by said defendant, said defendant caused and permitted an overflow of the waters so appropriated by it, to flow down into and along a certain natural channel or ravine, to the aforesaid above-described lands and premises, and the said defendant to prevent the waters thus overflowing down and through said natural channel

or ravine from flowing upon said land and premises, dug outside of and along the north side of said lands and premises, a ditch to convey said overflow water away from said lands and premises, but the said ditch proved insufficient and insecure and the same broke and gave way, and said overflow of waters came down to, over and across said lands and premises, and cut out and washed away portions thereof, and cut ditches in said lands and premises, and destroyed a garden thereon, and did large and considerable damage to said lands and premises, to the injury of the said Joe Garavanta, and thereupon he the said Joe Garavanta then and there being the owner, possessed and entitled to the possession of said lands and premises, threatened the said defendant and began to prepare to bring suit against said defendant for the damages and injuries which he had sustained by reason of the said overflow of said waters upon the said lands aforesaid, and thereupon the said defendant and the said Joe Garavanta then and there orally agreed by and between them that the said Joe Garavanta should permit the said overflow waters [3] to flow down to and across his said lands, and that the said defendant should have the right of way for said overflow waters, to and across and over the said lands of the said Joe Garavanta, and continue said overflow waters at all times, and in consideration therefor the said defendant would continue and permit the said overflow waters to flow down through said natural channel or ravine to the said lands and premises aforesaid, during the whole time it was engaged in the furnish-

ing of water in pursuance of its incorporation, and that the said Joe Garavanta and his successors in interest, should have the right to divert the said waters and use the same to irrigate the said lands and premises to the extent in which the said overflow water then and there ran, as long as said defendant was engaged in the business of its incorporation, and conducted and carried on its said business as hereinbefore averred. And that the said Joe Garavanta and his successors in interest, should have all of said overflow waters continuously and without interference, for the irrigation of the said lands and premises, free of charge, and the same should be permitted to overflow. And in pursuance of said agreement and in consideration of the use of the said waters upon said lands and premises, for the purposes of irrigation, said Joe Garavanta waived his right of action for damages for the injuries he had sustained, and gave and permitted and consented that the said overflow and waste waters from the works of the said defendant to run down said natural channel and ravine, and gave and granted to the said defendant a right of way therefor, through the aforesaid lands and premises. And the said defendant gave and granted to said Joe Garavanta, and his successors in interest, the right to use said waters as hereinbefore averred, and the said waters so flowed in sufficient amount and quantity and extent to enable the said Garavanta, during the irrigation seasons of the year, for years to irrigate said lands and premises to the extent of at least one hundred acres, and he began [4] the use thereof with the

full knowledge, consent and agreement of the said defendant, and irrigated at least one hundred acres of the said lands and premises aforesaid, during his ownership and occupancy of said lands and premises, for a period of not less than seven years. That he planted an orchard, put out various vines, planted a garden, cultivated nearly one hundred acres of said lands and premises in various annual crops, expended large sums of money and expended months of time and labor to enable him to use, for the purpose of irrigation said waste water and overflow waters in pursuance of the agreement aforesaid.

That thereby said lands and premises were greatly increased in value; that the said Joe Garavanta so occupied the said lands and premises, and so used the overflow waters as aforesaid, under said agreement, for a period of at least seven years, when he sold said lands and premises to G. Raffetto, through whom and by *mean conveyance* said lands and premises have vested in fee in these plaintiffs; together with the right to use said waters as aforesaid. That since the aforesaid agreement down to and including the years 1913, and continuously, the said plaintiffs, their predecessors and grantors, in pursuance of said agreement, have used the said overflow waters, and the same have overflowed and continued to overflow, and the said defendant has permitted the same, in harmony with said agreement, to overflow, for the purposes of irrigation of said lands and premises aforesaid.

That said lands of said plaintiffs are arid lands and that crops cannot be grown thereon or matured

without irrigation, but that with irrigation large and valuable crops of garden produce, horticultural products, grain, grasses and vegetables, can be, have been and are now being grown by the plaintiffs upon said lands, and that all of said waters hereinbefore mentioned are necessary for the proper irrigation and cultivation of said lands, and said waters have been for more than forty years last past, in [5] pursuance of said understanding and agreement aforesaid, continuously used upon said lands for irrigation purposes, with the full consent, agreement and knowledge of said defendant, and at all the times herein mentioned said overflow waters continued to overflow and were permitted to overflow by said defendant, and were not needed elsewhere or at all.

V.

That during the year 1913, said plaintiffs planted said lands in fields of grain, garden products, alfalfa, strawberries, potatoes and divers and sundry annual crops, and had then and there certain of said lands in orchard trees of divers and sundry kinds, as heretofore raised and cultivated, and by virtue of said irrigation as hereinbefore had, was of great value to said plaintiffs, and the said plaintiffs to enable them to plant said crops aforesaid, were compelled to and did expend in cost of labor therefor, the sum of \$1953.96, in the planting, plowing and cultivation of said crops, and the said crops so planted and cultivated were in good condition and growing splendidly, and the season was favorable to the usual yield and advantage to the plaintiffs, and said over-

flow waters were being used by said plaintiffs, and were overflowing as heretofore, and there was plenty of water for the purposes herein stated, and no loss or reduction of the quantity of water, for the uses and purposes of said defendant and to enable it to keep its agreement, on or about June 24th, 1913, when wrongfully and unlawfully the said defendant cut off, diverted and stopped the said overflow of waters as aforesaid, and wholly deprived the said plaintiffs of the use thereof, in violation of its said agreement, during the cropping season of same year, destroying the said crops, and all means of the irrigation of said lands from all the sources hereinbefore set forth, and ruined and wholly destroyed said crops, to the damage of these plaintiffs in the sum of Fourteen Thousand Eight Hundred and Twenty-three Dollars (\$14,823.00). [6]

WHEREFORE plaintiffs pray judgment against the said defendant in the sum of \$14,823.00, and costs of suit.

SWEENEY & MOREHOUSE,

Attorneys-at-Law.

State of Nevada,

County of Ormsby,—ss.

Mrs. Rose Bright and M. Bucchianeri, being duly sworn, each for himself or herself, says: That they and each of them have heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his or her knowledge, except as to the matters therein stated on information or belief, and as to those matters they and each of them

believe the same to be true.

MRS. ROSE BRIGHT.

M. BUCCHIANERI.

Subscribed and sworn to before me this 17th day of July, 1914.

[Seal]

JAMES G. SWEENEY,

Notary Public in and for the County of Ormsby,
State of Nevada. [7]

State of Nevada,

County of Ormsby,—ss.

Mrs. Rose Bright and M. Bucchianeri, being duly sworn, each for himself or herself, says: That they and each of them have heard read the foregoing complaint as amended in writing by authority of Court granted Sept. 9th, 1914, and knows the contents thereof, and that the same is true of his or her knowledge except as to the matters therein stated on information or belief, and as to those matters they and each of them believe the same to be true.

ROSE BRIGHT.

M. BUCCHIANERI.

Subscribed and sworn to before me this 9th day of September, 1914.

[Seal]

JAMES G. SWEENEY,

Notary Public in and for the County of Ormsby,
State of Nevada.

Due and personal service of the within Third Amended Complaint by copy thereof is admitted this 18th day of July, 1914.

CHENEY, DOWNER, PRICE & HAWKINS,

Attorneys for Defendant.

[Endorsed]: No. 1682. In the United States District Court of the State of Nevada. Rose Bright, et al., Plaintiffs, vs. Virginia & Gold Hill Water Company (a Corporation), Defendant. Third Amended Complaint. Filed July 20, 1914. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. Sweeney & Morehouse, Attorneys for Plaintiffs, Reno and Carson City, Nevada. [8]

*In the District Court of the United States for the
District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANERI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
a Corporation,
Defendant.

**Demurrer to Third Amended Complaint as Amended
September 9, 1914.**

Now comes the above-named defendant and demurs to the plaintiffs' third amended complaint, in the above-entitled action, as amended September 9, 1914, on the following grounds:

1. That said amended complaint does not state facts sufficient to constitute a cause of action.

2. That the oral agreement set forth in said complaint is void and of no effect because it is not in writing, and is in violation of that section of the statute of frauds, which is section 1069, of Vol. 1, Revised Laws of Nevada, in that it attempts to create,

grant or assign an estate or interest in land other than the lease for the term not exceeding one year by an agreement not in writing.

3. That the oral agreement set forth in said complaint is void and in violation of that portion of the statute of frauds, which is section 1075, of Vol. 1 of the Revised Laws of Nevada, in that said agreement is not to be performed within one year from the making thereof. [9]

4. That said amended complaint is insufficient and does not state a cause of action, in that it does not appear therefrom that there was no other source from which plaintiffs could obtain water for irrigation of their said lands in the year 1913.

5. That said amended complaint is uncertain in that it cannot be ascertained therefrom when the alleged agreement between Joe Garavanta and the defendant was made.

6. That said amended complaint is uncertain in that it cannot be ascertained therefrom with what officer or agent of the defendant company said oral agreement was made by said Joe Garavanta.

7. That said amended complaint is uncertain in that it cannot be ascertained therefrom whether the person or persons with whom said Joe Garavanta made said oral agreement were the officers or agents of said defendant, or authorized or empowered to make said agreement for and on behalf of the said defendant.

8. That said amended complaint is uncertain in that it cannot be ascertained therefrom the extent or value of the consideration which the said Joe Gara-

vanta paid or surrendered for said oral agreement with said defendant.

9. That said amended complaint is insufficient and does not state facts sufficient to constitute a cause of action therein which is on the law side of the Court, on the ground and for the reason that the allegations of plaintiff's complaint show that his remedy is not by an action at law, but by injunction and bill in equity, and this Court is without jurisdiction to entertain the same as an action at law.

WHEREFORE, the defendant prays that this demurrer be sustained, and plaintiffs' suit be dismissed with costs.

CHENEY, DOWNER, PRICE & HAWKINS,

Attorneys for Defendant. [10]

[Endorsed]: No. 1682. In the District Court of the United States for the District of Nevada. Rose Bright et al., Plaintiffs, vs. Virginia & Gold Hill Water Company, a Corporation, Defendant. Demurrer to Third Amended Complaint as Amended September 9, 1914. Due service of the within by copy, admitted Sept. 19, 1914. Sweeney & Morehouse, by L. F. Thomas, Attorney for Plaintiffs. Filed this 21st day of September, 1914. T. J. Edwards, Clerk. Cheney, Downer, Price & Hawkins, Reno, Nevada, Attorneys for Defendant.

[Order Sustaining Demurrer, etc.]

JOURNAL ENTRY OF DATE OCTOBER 24th,
1914, SHOWING DISPOSITION OF DEMURRER TO THIRD AMENDED COMPLAINT, AS AMENDED.

ROSE BRIGHT et al.

vs.

VIRGINIA & GOLD HILL W. CO.

The demurrer to the Third Amended Complaint as amended on the face thereof, heretofore submitted, having been duly considered by the Court, it is now ORDERED that the same be, and is hereby, sustained; and that the plaintiffs are given twenty-five days within which to take such further steps as advised. [11]

*In the District Court of the United States for the
District of Nevada.*

No. 1682.

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANERI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY, a
Corporation,
Defendant.

Judgment.

BE IT REMEMBERED that in the above-entitled action the demurrer of the defendant to the last-

amended complaint of said plaintiffs having been sustained on the ground that said amended complaint did not state facts sufficient to constitute a cause of action, and leave to the plaintiffs to further amend their said complaint if they so desired having been heretofore given, and the time therefor subsequently extended, and said time having fully expired, and said plaintiffs having declined to further amend said complaint;

NOW, THEREFORE, by reason of the law and the premises, and upon motion of the attorneys for said defendant, it is ORDERED, ADJUDGED and DECREED that the said plaintiffs take nothing by their said complaint and that the defendant have judgment for its costs herein, taxed at \$——.

Done in open court this 30th day of December, 1914.

E. S. FARRINGTON,
District Judge. [12]

[Endorsed]: No. 1682. In the District Court of the United States for the District of Nevada. Rose Bright et al., Plaintiffs, vs. Virginia & Gold Hill Water Company, a Corporation, Defendant. Judgment. Filed this 30th Day of December, 1914. T. J. Edwards, Clerk. Cheney, Downer, Price & Hawkins, Attorneys for Defendant. [13]

[Opinion.]

*In the District Court of the United States, in and for
the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANERI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY, a
Corporation,

Defendant.

SWEENEY & MOREHOUSE, for Plaintiffs.
CHENEY, DOWNER, PRICE & HAWKINS,
for Defendant.

FARRINGTON, District Judge:

The complaint shows that for the last forty years defendant has been transporting water from Marlette Lake to Virginia City, and that it has caused and permitted a surplus of the waters so appropriated to flow across plaintiffs' premises. Some thirty years ago this water seriously damaged the premises, which were then owned by one Joe Garavanta. Garavanta was on the point of beginning an action when the matter was settled by an oral agreement, under which Garavanta agreed to permit the water to flow across his premises, and the company agreed to allow him to make use of it for agricultural purposes. For at least seven years plaintiffs and their grantors have used the water in the irrigation of at least one hundred acres of land; they have planted

an orchard, put out various vines, made a garden, and expended large sums of money and months of labor to secure the beneficial use of this overflow water. [14]

During the year 1913 plaintiffs had large and valuable crops growing on these premises, which they were irrigating with the full consent, agreement and knowledge of the defendant; and at all times mentioned in the complaint these overflow or waste waters continued to overflow, and were permitted to overflow by the defendant, and were not needed elsewhere, or at all. The amount expended during the year 1913 in planting crops on plaintiffs' said premises was \$1,953.96. On or about June 24, 1913, while the waters were so overflowing, and there was plenty of water for the purposes of irrigation, and no loss or reduction in the quantity of water, the defendant, in violation of said agreement, wrongfully and unlawfully cut off and stopped said overflow of water, and wholly deprived plaintiffs of the use thereof during the cropping season of that year, to plaintiffs' injury in the sum of \$14,823.00.

To this complaint defendant has demurred on numerous grounds. The most important objections are as follows:

First: The complaint does not state facts sufficient to constitute a cause of action;

Second: The agreement is void and of no effect, because not in writing, and is in violation of the Nevada statute of frauds, in that it attempts to create, grant or assign an estate or interest in land other than a lease, for a term not exceeding one year,

by an agreement not in writing; and in that the agreement is not to be performed within one year from the making thereof.

It is claimed by defendant that the agreement set out creates merely a license which may be revoked at any time by defendant company. While conceding this as a general principle, plaintiffs contend that under the peculiar circumstances of the case, in view of the fact that they had expended so large a sum of money in planting crops, all of which was known and understood by defendant, defendant could not revoke the license at the time [15] it is alleged to have done so, and cut off the flow of waste water, without rendering compensation for the injury. In support of this position they have cited the case of *Lee v. McLeod*, reported in 12 Nevada, page 280.

In that case the Supreme Court of Nevada held that a parol license to erect a dam upon another's land for the purpose of running a flour mill, is irrevocable after the party to whom the license is given has executed it by erecting the mill, or otherwise expending money upon the faith of the license; the expenditure of money in consequence of the license has the effect of turning such a license into an agreement that will be enforced in equity; the execution of the parol license supplies the place of a writing, and takes the case out of the statute of frauds.

In that case it appeared that after granting the license to erect the dam, after the dam had been constructed and a flour mill had been erected, to be operated by use of waters impounded in the dam, the

grantor went further up the stream and diverted the water away from the dam and mill. Lee then brought suit against the grantor McLeod to recover damages for the unlawful diversion of the water, and asked an injunction against further diversions. A judgment of nonsuit in the lower court was reversed.

That case differs quite materially from the one now in hand. The allegation is that "defendant diverted and stopped the said overflow of water as aforesaid." In other words, the defendant failed to divert enough water from Marlette Lake to create an overflow and a waste which would run down to plaintiffs' premises. This, I understand, is conceded to be the effect of the allegation.

If this is sufficient to constitute a cause of action, then defendant was not only bound under its oral agreement to permit plaintiffs to use the waste water once it had escaped from the flumes, but it was bound to actively supply and create a sufficient [16] amount of waste water to irrigate plaintiffs' premises, after plaintiffs had put in a crop.

It does not seem to me that the facts set out in the complaint, or the agreement itself, are sufficient to lay upon defendant any such a burden. The failure of defendant to create such an overflow is not a revocation of a license; it is a failure to perform an affirmative act.

If during all this time there had been an actual overflow from defendant's flumes, which at some lower point above plaintiffs' premises was diverted by the defendant as actual waste water, then we should have a situation very similar to that pre-

sented in the case of Lee vs. McLeod, and the rules there announced would be applicable. If in that case it had been a question as to whether McLeod under his oral agreement was bound to take such active measures as were necessary to insure a sufficient quantity of water at plaintiff's dam to run the mill, in my judgment the decision of the Supreme Court would have been quite different.

The demurrer is sustained, and plaintiffs are allowed twenty days within which to take such steps as they may be advised.

[Endorsed]: No. 1682. In the District Court of the United States, in and for the District of Nevada. Rose Bright and Richard Bright, Her Husband, and M. Bucchianeri, Plaintiffs, vs. Virginia & Gold Hill Water Company, a Corporation, Defendant. Opinion. Filed October 24th, 1914. T. J. Edwards, Clerk. [17]

*In the District Court of the United States, in and
for the State of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
Defendant.

Petition for Writ of Error.

To the Honorable E. S. FARRINGTON, Judge of
said District Court:

The plaintiffs, Rose Bright and Richard Bright,

her husband, and M. Bucchianari, by their attorneys, Messrs. Sweeney & Morehouse, respectfully show:

That heretofore, to wit, on the 1st day of August, 1913, said plaintiffs filed an action against the said defendant, in the District Court of the First Judicial District of the State of Nevada, in and for the County of Ormsby, and due service of process, was made on said defendant, and that thereupon said defendant, by proper proceedings, caused said action to be removed to the said District Court of the U. S. above named, and the proceedings and demurrers were heard until said plaintiffs filed their third amended complaint, to which said defendant filed a demurrer, and which said demurrer was duly argued and submitted and the Court thereafter by written opinion sustained said demurrer, and said plaintiffs declining to amend said third amended complaint, within the time fixed by order of the Court, the said defendant caused a final [18] judgment to be and entered in said cause against said plaintiffs and in favor of defendant, which said final judgment was entered on the 30 day of Dec., 1914, against your petitioners.

Your petitioners, feeling themselves aggrieved by the said judgment so entered as aforesaid, herewith petition the said District Court of the United States, for the District of Nevada, for an order allowing them to prosecute a Writ of Error to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting in San Francisco, State of California, under the laws of the United States in such cases, made and provided.

WHEREFORE, your petitioner prays that a Writ of Error do issue, and that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid, sitting in San Francisco, in said Circuit Court, for the correction of the errors complained of, and herewith assigned, be allowed, and that an order be made fixing the amount of security to be given by the plaintiff, conditional as the law directs.

SWEENEY & MOREHOUSE,
Attorneys for Plaintiff.

[Endorsed]: In the District Court of the United States in and for the District of Nevada. Rose Bright, and Richard Bright, Her Husband, and M. Bucchianari, Plaintiffs, vs. Virginia & Gold Hill Water Company, Defendant. Petition for Writ of Error. Filed this 26th day of February, A. D. 1915. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. Sweeney & Morehouse, Attorneys for Plaintiffs.
[19]

*In the District Court of the United States, in and
for the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
Defendant.

Assignments of Error.

Now comes Rose Bright and Richard Bright, her husband, and M. Bucchianari, plaintiffs above

named, and in connection with their Petition for a Writ of Error, in this cause, makes and files the following Assignments of Errors upon which they will rely in the prosecution of their Writ of Error in the above-entitled cause and upon which they rely to reverse the judgment herein as appears of record:

I.

That the Court erred in sustaining defendant's demurrer to plaintiff's Third Amended Complaint.

II.

That the judgment entered herein is against law, in this, to wit that said complaint contains and states a complete cause of action against said defendant.

III.

That said demurrer should have been overruled, and the cause submitted to trial before a jury and that said judgment is contrary to law and the facts.
[20]

WHEREFORE, the plaintiffs herein, pray, that the judgment herein be reversed.

Dated February 26th, 1915.

SWEENEY & MOREHOUSE,
Attorneys for Plaintiffs in Error.

[Endorsed]: No. 1682. In the District Court of the United States in and for the District of Nevada. Rose Bright and Richard Bright, Her Husband, and M. Buccianari, Plaintiffs, vs. Virginia & Gold Hill Water Company, Defendant. Assignments of Error. Filed this 26th Day of February, A. D. 1915. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. Sweeney & Morehouse, Attorneys for Plaintiffs.
[21]

*In the District Court of the United States, in and for
the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
Defendant.

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

Upon motion of Messrs. Sweeney & Morehouse, attorneys for the above-named plaintiffs, and upon filing a petition for a Writ of Error and Assignments of Error,

It is ORDERED that a Writ of Error be, and it hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein, and that the amount of bond on said Writ of Error be, and the same is hereby fixed at (\$500.00) Five Hundred Dollars; said bond to serve as a cost bond on said Writ of Error.

Dated February 26th, 1915.

E. S. FARRINGTON,
Judge of the United States District Court for the
District of Nevada.

[Endorsed]: No. 1682. In the District Court of the United States, in and for the District of Nevada. Rose Bright and Richard Bright, Her Husband, and M. Bucchianari, Plaintiffs, vs. Virginia & Gold Hill

Water Company, Defendant. Order Allowing Writ of Error. Filed this 26th day of February, A. D. 1915. T. J. Edwards, Clerk. Sweeney & Morehouse, Attorneys for Plaintiffs. [22]

*In the District Court of the United States, in and for
the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY
Defendant.

Praeceptum [for Transcript of Record.]

To the Clerk of the Above-entitled Court:

Dear Sir: You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, under the Writ of Error issued herein and now perfected to said Court, and include in said transcript, the following:

Plaintiffs' Third Amended Complaint; the Demurrer thereto; the Opinion of the Court sustaining said Demurrer; the Judgment entered herein upon plaintiffs' failure to further amend their complaint; Petition for Writ of Error; Assignment of Errors; Order Granting Writ of Error; Bond on Writ of Error; Writ of Error; Citation, and this Praeceptum; said transcript to be prepared as required by law, and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the

Ninth Circuit and have the same on file in the office of the clerk of said Circuit (Court) of Appeals, at San Francisco, State of California, before the 28th day of March, 1915.

SWEENEY & MOREHOUSE,
(Attorneys for) Plaintiffs in Error.

[Endorsed]: No. 1682. In the District Court of the United States, in and for the District of Nevada. Rose Bright and Richard Bright, Her Husband, and M. Bucchianari, Plaintiffs, vs. Virginia & Gold Hill Water Company, Defendant. Praecipe. Filed this 26th day of February, A. D. 1915. T. J. Edwards, Clerk. Sweeney & Morehouse, Attorneys for Plaintiff. [23]

*In the District Court of the United States, in and for
the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we Rose Bright and Richard Bright, her husband, and M. Bucchianari, as principals, and Columbia Rafetto (and) F. L. Wildes of Carson City, Nevada, as sureties, are held and firmly bound unto Virginia and Gold Hill Water Company, the de-

fendant in said above-entitled action in the full amount of (\$500.00) Five Hundred Dollars, lawful money of the United States, to be paid to said defendant, its successors or assigns, to which payment well and truly to be made, we bind ourselves, execution, administrators or assigns, jointly and severally by these presents.

Signed and dated this 26 day of February, 1915.

The condition of the above obligation is that WHEREAS, at a regular term of the United States District Court for the District of Nevada, sitting at Carson City, in said district, in an action at law pending in said court, as hereinabove entitled, Cause No. 1682 on the law docket of said court, final judgment was rendered and entered against said plaintiffs, and in favor of said defendant, upon an order sustaining a demurrer to plaintiffs' action, and [24]

WHEREAS, said plaintiffs have obtained a Writ of Error, and filed a copy thereof in the clerk's office of said court, to reverse the said judgment of the said court in the aforesaid action, and a citation directed to the said defendant in error, citing it to appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City and County of San Francisco, in the State of California, according to law, within thirty days from the date hereof.

NOW THE ABOVE OBLIGATION IS SUCH, that if said plaintiffs shall prosecute their Writ of Error to effect and answer all damages and costs if they fail to make good their plea, then this obligation to be void, else to remain in full force and virtue.

IN WITNESS WHEREOF, said plaintiffs and said sureties have hereunto set their hands and seals, this 27th day of February, 1915.

ROSE BRIGHT.

R. T. BRIGHT.

M. BUCCHIANARI.

COLUMBIA RAFFETTO.

F. L. WILDES. [25]

State of Nevada,

County of Ormsby,—ss.

Rose Bright and Richard Bright and M. Bucchianeri, plaintiffs, and Columbia Rafetto and F. L. Wildes, sureties, being each severally duly sworn say: That they and each of them are residents and freeholders, in the County of Ormsby, State of Nevada, and each separately worth the sum of (\$500.00) Five Hundred Dollars, over and above all his just debts and liabilities in property which is not exempt from sale or execution.

ROSE BRIGHT.

R. T. BRIGHT.

M. BUCCHIANERI,

COLUMBIA RAFFETTO.

F. L. WILDES.

Subscribed and sworn to by each of the aforesaid parties, before me this 27th day of February, 1915.

[Seal]

JAMES G. SWEENEY,

Notary Public, in and for the County of Ormsby,
State of Nevada.

My commission expires

The foregoing Bond on Writ of Error is hereby approved this 27th day of February, 1915.

E. S. FARRINGTON,
Judge of the United States District Court for the
District of Nevada.

[Endorsed]: No. 1682. In the District Court of the United States, in and for the District of Nevada. Rose Bright and Richard Bright, Her Husband, and M. Buccianari, Plaintiffs, vs. Virginia & Gold Hill Water Company, Defendant. Bond on Writ of Error. Filed this 27th day of February, A. D. 1915. T. J. Edwards, Clerk. Sweeney & Morehouse, Attorneys for Plaintiffs. [26]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States for the
District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANERI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
(a Corporation),
Defendant.

I, T. J. Edwards, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that the foregoing twenty-six (26) typewritten pages, numbered from 1 to 26, inclusive, to be a full, true and correct copy of the record and of all

proceedings in said cause and court, and that the same, together with the original Citation and Writ of Error, hereto annexed, constitute the return to the Writ of Error.

I do hereby certify that the costs of the foregoing record is \$26.50, and that the same has been paid by the plaintiffs herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Carson City, Nevada, this 25th day of March, 1915.

[Seal]

T. J. EDWARDS,

Clerk.

[Ten Cent Internal Revenue Stamp. Canceled Mar. 25, 1915. T. J. Edwards.] [27]

*In the District Court of the United States, in and for
the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
Defendants.

Writ of Error.

United States of America,—ss.

The President of the United States to the Honorable
E. S. FARRINGTON, Judge of the District
Court of the United States for the District of
Nevada, Greeting:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea, which is in

the said District Court, before you, between Rose Bright and Richard Bright, her husband and M. Bucchianari, plaintiffs, and the Virginia & Gold Hill Water Company, defendant, a manifest error has happened to the great damage of the said plaintiffs and each of them, as by said complaint appears, and we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly you send the record and proceedings, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same, at the City and County of San Francisco, in the State of California, on the 28th day of March, 1915, in the *Circuit of Appeals*, to be then and there held, that the record and proceedings [28] aforesaid being inspected, the Circuit Court of Appeals, may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable E. S. FARRINGTON,
United States District Judge, for the District of
Nevada, the 27th day of February, 1915.

[Seal]

T. J. EDWARDS,

Clerk of the United States District Court for the
District of Nevada. [29]

[Endorsed]: No. 1682. In the District Court of
the United States, in and for the District of Nevada.
Rose Bright and Richard Bright, Her Husband, and

M. Bucchianari, Plaintiffs, vs. Virginia & Gold Hill Water Company, Defendant. Writ of Error. Filed this 4th day of March, A. D. 1915. T. J. Edwards, Clerk. H. D. Edwards, Deputy. Sweeney & Morehouse, Attorneys for Plaintiffs.

Service by copy of Writ of Error as issued in the above-entitled court and cause accepted this 2d day of Mar. 1915.

CHENEY, DOWNER, PRICE & HAWKINS,
Attorneys for Defendant. [30]

*In the District Court of the United States, in and for
the District of Nevada.*

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANARI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY,
Defendants.

Citation on Writ of Error.

The President of the United States of America, to
Virginia & Gold Hill Water Company, and
Messrs. Cheney, Downer, Price and Hawkins,
its Attorneys, Greeting:

You and each of you are hereby cited and admonished to be, and appear, in the Circuit Court of Appeals for the Ninth Circuit, at the City and County of San Francisco, State of California, within (30) thirty days from and after the date which this citation bears, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United

States, for the District of Nevada, in the above-entitled cause, wherein said parties plaintiff herein, are plaintiffs in error, and the said Virginia & Gold Hill Water Company, are defendants in error, to show cause if any you have, why the judgment made and rendered in said cause on the 30 day of December, 1914, against said plaintiffs and in favor of said defendant, should not be corrected and reversed as prayed in the petition herein and set forth in the writ of error herein, and why justice should not be done to the parties in that behalf.

Witness the Honorable E. S. FARRINGTON, United States District Judge in and for the District of Nevada, this 26th day of February, 1915.

[Seal] E. S. FARRINGTON,
Judge of United States District Court for the District of Nevada.

[Seal] Attest: T. J. EDWARDS,
Clerk. [31]

[Endorsed]: In the District Court of the United States, for the District of Nevada. Rose Bright, and Richard Bright, Her Husband, and M. Bucchi-
aneri, Plaintiffs, vs. Virginia & Gold Hill Water Company, Defendant. No. 1682. Citation on Writ of Error. Filed this 4th day of March, 1915. T. J. Edwards, Clerk. By H. D. Edwards, Deputy.

Service by copy of Citation on Writ of Error as issued in the above-entitled court and cause accepted this 2 day of Mar. 1915.

CHENEY, DOWNER, PRICE & HAWKINS,
Attorneys for Defendant. [32]

*In the District Court of the United States for the
District of Nevada.*

No. 1682.

ROSE BRIGHT and RICHARD BRIGHT, Her
Husband, and M. BUCCHIANERI,
Plaintiffs,

vs.

VIRGINIA & GOLD HILL WATER COMPANY
(a Corporation),

Defendant.

Answer to Writ of Error.

The answer of the Judge of the District Court of the United States for the District of Nevada.

The record and all proceedings of the *pliant* whereof mentioned is within *name*, that all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

T. J. EDWARDS,
Clerk. [33]

[Endorsed]: No. 2587. United States Circuit Court of Appeals for the Ninth Circuit. Rose Bright and Richard Bright, Her Husband, and M. Buccianari, Plaintiffs in Error, vs. Virginia & Gold Hill Water Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Nevada.

Filed March 29, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.